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Andorra

VENTURE CAPITAL

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Cases & Lacambra



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This country-specific Q&A provides an overview of venture capital laws and regulations applicable in Andorra.

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ANDORRA

VENTURE CAPITAL



1. Are there specific legal requirements or preferences regarding the choice of entity and/or equity structure for early-stage businesses that are seeking venture capital funding in the jurisdiction?

Although any type of company can be used to seek venture capital financing, the Andorran law specifically provides for the start-up company regime to which under the compliance of certain requirements some incentives are applied to favour its financing at early stages. To do so, companies that would benefit from this incentive must prove that they have an emerging business model based on the development of innovative products and services using technology as an underlying element. These companies may have either the structure of a limited company (*societat de responsabilitat limitada*) or a public limited company (*societat anònima*).

2. What are the principal legal documents for a venture capital equity investment in the jurisdiction and are any of them publicly filed or otherwise available to the public?

Following the industry standards the principal legal documents used for venture capital equity in the jurisdiction are the term sheet where lays out the guidelines of a deal, the subscription agreement and the stock purchase agreement (SPA) where both parties establish the specific terms of the investment and the purchase and sale of the stocks to the investor. These documents are not publicly filed or available to the public since they are negotiated and entered into between both parties, the investor and founder of the early-stage business.

3. Is there a venture capital industry body in the jurisdiction and, if so, does it provide template investment documents?

If so, how common is it to deviate from such templates and does this evolve as companies move from seed to larger rounds?

There is no venture capital industry body in the jurisdiction beyond the registration faculties granted to the Andorran companies register to resolve on the status of start-up company following the compliance of the legal requirements. The investment documents drafted and agreed by the parties usually follow the standards of the industry.

4. Are there any regulatory frameworks in respect of companies offering shares for sale that need to be considered, for example any restrictions on selling and/or promoting the sale of shares to the general public?

There are no regulatory frameworks or limitations beyond those applicable to the Andorran financial sector. However, the selling or promoting the sale of shares to the general public must comply with the usual applicable laws on companies, advertising, data protection and anti-money laundering.

5. Are there any general merger control, anti-trust/competition and/or foreign direct investment regimes applicable to venture capital investments in the jurisdiction?

The current Ministry of Presidency, Economy, Employment and Housing is responsible for enforcement of the competition law, including the merger control provisions. The competition law applies to changes of control on a lasting basis, including full mergers of previously independent companies, acquisitions of majority shareholdings, acquisitions of controlling minority shareholdings, and the acquisition of joint control over one or more companies, when they

permanently develop functions of an autonomous economic entity.

This Ministry is also responsible to grant foreign direct investment authorisations to investors that qualify as non-resident natural or legal person in the jurisdiction.

6. What are the prevailing tax incentives or structures offered to venture capital investors in the jurisdiction, if any?

Tax incentives for venture capital are basically the exemption of remuneration or income received by directors, observers or employees in the form of shares, share options or economic rights linked to the value of the share and exemption for the incomes received by asset or services providers in form of shares or economic rights linked to their value exceeding of the market value of the assets or services provided.

7. What is the process, and internal approvals needed, for a company issuing shares to investors in the jurisdiction and are there any related taxes or notary (or other fees) payable?

The issue of shares requires the relevant resolution of the shareholder's general meeting to increase the company's share capital by issuing new shares. The assumption of these shares by the investors is formalised in a public deed before a notary public that must be registered in the Andorran companies register. There are no taxes payable related to the issuance of new shares. However, notary and legal advisor fee shall be taken in mind.

8. How prevalent is participation from investors that are not venture capital funds, including angel investors, family offices, high net worth individuals, and corporate venture capital?

Although the main investors are those abovementioned, it is not uncommon for other types of investors to participate, although in these cases the prior existing relationship between the investor and the company or the specific characteristics of company or its business sector should be relevant.

9. What is the typical investment period for

a venture capital fund in the jurisdiction?

The typical investment period for a venture capital fund in the jurisdiction follows the industry standards and may vary between from a 4- 5 years to an 8 - 10 years horizon.

10. What are the key investment terms which a venture investor looks for in the jurisdiction including representations and warranties, class of share, board representation (and observers), voting and other control rights, redemption rights, anti-dilution protection and information rights?

There are no particular or specific investment terms that venture investors look for in the jurisdiction. They look for the usual and standard investment terms to securitize and protect their investment. However, we can say that the most common are having a board representation and voting and other control rights over the invested company.

11. How common are arrangement/ monitoring fees for investors in the jurisdiction?

Following the industry standards and the needs of the transaction it is common for venture capital investors to agree arrangement or monitoring fixed fee as part of the content of the legal documents.

12. Are founders and senior management typically subject to restrictive covenants following ceasing to be an employee and/or shareholder and, if so, what is their general scope and duration?

Both founders and senior management are typically subject to exclusivity and non-compete covenants to engage in similar activities within the jurisdiction for a period up to 3 years.

13. How are employees typically incentivised in venture capital backed companies (e.g. share options or other equity-based incentives)?

Employees are usually incentivised by linking their remuneration to share options or economic rights linked

to the value of the company shares, since these incentives have dual benefits. On one hand the employee's interest would be aligned with the company/investor interests and on the other hand, this kind of remuneration is tax exempted for startup regime companies.

14. What are the most commonly used vesting/good and bad leaver provisions that apply to founders/ senior management in venture capital backed companies?

It is crucial for to venture capital investment the establishment of good leaver and bad leaver clauses in the legal documents to protect the interests of the investor and to align the interests of the founders/senior management with the interests of the company. These clauses set out the conditions, procedures to be followed and consequences of a potential leave of founders or senior managers.

15. What have been the main areas of negotiation between investors, founders, and the company in the investment documentation, over the last 24 months?

The main areas of negotiation in the investment documents between investors, founders and the company were (i) Establishment of the terms and conditions aimed to perform the corporate governance, management and functioning of the company; (ii) Investors preferred rights; (iii) Matters subject to enhanced majority; (iv) Establishment of a conflict-of-interest resolution procedure. All of these matters tend to protect the entry of the investors in the company balancing their post-closing situation with the founders.

16. How prevalent is the use of convertible debt (e.g. convertible loan notes) and advance subscription agreement/ SAFEs in the jurisdiction?

Convertible debt is one of the alternatives that can be used in the jurisdiction in addition to, among others, direct equity investment in the company. The choice of the alternative depends on the negotiation between the parties, the timing component, and the structuring of the transaction, as in practice both follow and require similar

arrangements and formalities.

17. What are the customary terms of convertible debt (e.g. convertible loan notes) and advance subscription agreement/ SAFEs in the jurisdiction and are there standard form documents?

The terms to be reviewed and adjusted are referred to the conversion price at which the debt would be converted to equity, the maturity date and the interest rate and finally the discount by which the conversion price would be reduced.

18. How prevalent is the use of venture or growth debt as an alternative or supplement to equity fundraisings or other debt financing in the last 24 months?

The recourse to venture debt as an alternative to equity fundraising has been clearly increased over the last 24 months related to business in the technology sector. However, it is true that the specific type of financing adopted is narrowly linked to the purpose of the business.

19. What are the customary terms of venture or growth debt in the jurisdiction and are there standard form documents?

As in the same case of convertible debt, venture or growth debt are based and follows standard terms.

20. What are the current market trends for venture capital in the jurisdiction (including the exits of venture backed companies) and do you see this changing in the next year?

The increase of interest rates over the last year together with the approval of the law to encourage and incentive entrepreneurship, innovation and the digital economy are two key elements for the growth of venture capital in the jurisdiction during the next year. We will see if this trend consolidates or even intensifies with the signing of Andorra's association agreement with the European Union foreseen in the first half of the year 2025.

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